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Direct Corporation and Meetu Magic, Inc.
11

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 STAR FABRICS, INC., a California
16 Corporation,

17 Plaintiff,

18 vs.

19 BURLINGTON COAT FACTORY
20 DIRECT CORPORATION, a Delaware
Corporation; MEETU MAGIC, INC. a New
21 York Corporation; and DOES 1 through 10,

22 Defendants.
23

Case No. 2:16-cv-02685-PA-FFMx

~~[PROPOSED]~~ PROTECTIVE ORDER

24 Complaint Filed: April 19, 2016
25 Trial Date: None Set
26
27
28

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EST. 1981

1 On stipulation of the Parties, the Court enters a Protective Order in this matter as
2 follows:

3 1. A. PURPOSES AND LIMITATIONS

4 Discovery in this action is likely to involve production of confidential,
5 proprietary, or private information for which special protection from public disclosure
6 and from use for any purpose other than prosecuting this litigation may be warranted.
7 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
8 Stipulated Protective Order. The parties acknowledge that this Order does not confer
9 blanket protections on all disclosures or responses to discovery and that the protection it
10 affords from public disclosure and use extends only to the limited information or items
11 that are entitled to confidential treatment under the applicable legal principles. The
12 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
13 Protective Order does not entitle them to file confidential information under seal; Civil
14 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
15 will be applied when a party seeks permission from the court to file material under seal.

16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets, customer and pricing lists and other
18 valuable research, development, commercial, financial, technical and/or proprietary
19 information for which special protection from public disclosure and from use for any
20 purpose other than prosecution of this action is warranted. Such confidential and
21 proprietary materials and information consist of, among other things, confidential
22 business or financial information, information regarding confidential business practices,
23 or other confidential research, development, or commercial information (including
24 information implicating privacy rights of third parties), information otherwise generally
25 unavailable to the public, or which may be privileged or otherwise protected from
26 disclosure under state or federal statutes, court rules, case decisions, or common law.
27 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
28 disputes over confidentiality of discovery materials, to adequately protect information

1 the parties are entitled to keep confidential, to ensure that the parties are permitted
 2 reasonable necessary uses of such material in preparation for and in the conduct of trial,
 3 to address their handling at the end of the litigation, and serve the ends of justice, a
 4 protective order for such information is justified in this matter. It is the intent of the
 5 parties that information will not be designated as confidential for tactical reasons and
 6 that nothing be so designated without a good faith belief that it has been maintained in a
 7 confidential, non-public manner, and there is good cause why it should not be part of
 8 the public record of this case.

9 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

10 The parties further acknowledge, as set forth in Section 12.3, below, that this
 11 Stipulated Protective Order does not entitle them to file confidential information under
 12 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
 13 standards that will be applied when a party seeks permission from the court to file
 14 material under seal.

15 There is a strong presumption that the public has a right of access to judicial
 16 proceedings and records in civil cases. In connection with non-dispositive motions,
 17 good cause must be shown to support a filing under seal. See *Kamakana v. City and*
 18 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
 19 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,
 20 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
 21 cause showing), and a specific showing of good cause or compelling reasons with
 22 proper evidentiary support and legal justification, must be made with respect to
 23 Protected Material that a party seeks to file under seal. The parties' mere designation of
 24 Disclosure or Discovery Material as CONFIDENTIAL does not—without the
 25 submission of competent evidence by declaration, establishing that the material sought
 26 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
 27 constitute good cause.
 28

Further, if a party requests sealing related to a dispositive motion or trial, then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. See *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: *Star Fabrics, Inc. v. Burlington Coat Factory Direct Corporation*, Case No. 2:16-cv-02685-PA-FFMx.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including, among
6 other, testimony, transcripts, and tangible things), that are produced or generated in
7 disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
10 expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
17 this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm which
19 has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this Action.

24 2.13 Professional Vendors: persons or entities that provide litigation
25 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
27 their employees and subcontractors.
28

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.
Each Party or Non-Party that designated information or items for protection under this

1 Order must take care to limit any such designation to specific material that qualifies
 2 under the appropriate standards. The Designating Party must designate for protection
 3 only those parts of material, documents, items, or oral or written communications that
 4 qualify so that other portions of the material, documents, items, or communications for
 5 which protection is not warranted are not swept unjustifiably within the ambit of this
 6 Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 8 are shown to be clearly unjustified or that have been made for an improper purpose
 9 (e.g., to unnecessarily encumber the case development process or to impose
 10 unnecessary expenses and burdens on other parties) may expose the Designating Party
 11 to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
 13 designated for protection do not qualify for protection, that Designating Party must
 14 promptly notify all other Parties that it is withdrawing the inapplicable designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 16 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
 17 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
 18 must be clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents,
 21 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
 22 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
 23 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
 24 portion of the material on a page qualifies for protection, the Producing Party also must
 25 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 26 margins).

27 A Party or Non-Party that makes original documents available for inspection
 28 need not designate them for protection until after the inspecting Party has indicated

1 which documents it would like copied and produced. During the inspection and before
 2 the designation, all of the material made available for inspection shall be deemed
 3 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
 4 copied and produced, the Producing Party must determine which documents, or portions
 5 thereof, qualify for protection under this Order. Then, before producing the specified
 6 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
 7 that contains Protected Material. If only a portion of the material on a page qualifies for
 8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
 9 by making appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party identifies the
 11 Disclosure or Discovery Material on the record, before the close of the deposition all
 12 protected testimony.

13 (c) for information produced in some form other than documentary and for any
 14 other tangible items, that the Producing Party affix in a prominent place on the exterior
 15 of the container or containers in which the information is stored the legend
 16 “CONFIDENTIAL.” If only a portion or portions of the information warrants
 17 protection, the Producing Party, to the extent practicable, shall identify the protected
 18 portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 20 failure to designate qualified information or items does not, standing alone, waive the
 21 Designating Party’s right to secure protection under this Order for such material. Upon
 22 timely correction of a designation, the Receiving Party must make reasonable efforts to
 23 assure that the material is treated in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 26 designation of confidentiality at any time that is consistent with the Court’s Scheduling
 27 Order.
 28

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
5 to harass or impose unnecessary expenses and burdens on other parties) may expose the
6 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
7 the confidentiality designation, all parties shall continue to afford the material in
8 question the level of protection to which it is entitled under the Producing Party's
9 designation until the Court rules on the challenge.

10
11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 Action only for prosecuting, defending or attempting to settle this Action. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the Action has been terminated, a Receiving
17 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
23 may disclose any information or item designated "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to
26 disclose the information for this Action;

27 (b) the officers, directors, and employees (including House Counsel) of the
28 Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or
5 order is subject to this Protective Order. Such notification shall include a copy of this
6 Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by
8 the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” before a determination by the court from which the subpoena or
12 order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that court
14 of its confidential material and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
16 directive from another court.

17
18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
19 IN THIS LITIGATION

20 (a) The terms of this Order are applicable to information produced by a Non-
21 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
22 by Non-Parties in connection with this litigation is protected by the remedies and relief
23 provided by this Order. Nothing in these provisions should be construed as prohibiting
24 a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to produce
26 a Non-Party’s confidential information in its possession, and the Party is subject to an
27 agreement with the Non-Party not to produce the Non-Party’s confidential information,
28 then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party that some
 2 or all of the information requested is subject to a confidentiality agreement with a Non-
 3 Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
 5 Order in this Action, the relevant discovery request(s), and a reasonably specific
 6 description of the information requested; and

7 (3) make the information requested available for inspection by the Non-Party, if
 8 requested.

9 (c) If the Non-Party fails to seek a protective order from this court within 14
 10 days of receiving the notice and accompanying information, the Receiving Party may
 11 produce the Non-Party's confidential information responsive to the discovery request.
 12 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
 13 any information in its possession or control that is subject to the confidentiality
 14 agreement with the Non-Party before a determination by the court. Absent a court order
 15 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
 16 in this court of its Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 20 Protected Material to any person or in any circumstance not authorized under this
 21 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
 22 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
 23 all unauthorized copies of the Protected Material, (c) inform the person or persons to
 24 whom unauthorized disclosures were made of all the terms of this Order, and (d)
 25 request such person or persons to execute the "Acknowledgment and Agreement to Be
 26 Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: September 26, 2016

By: /S/FREDERICK F. MUMM
Honorable Frederick F. Mumm
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Stipulated Protective Order that was issued
 by the United States District Court for the Central District of California on _____,
 2016 in the case of *Star Fabrics, Inc. v. Burlington Coat Factory Direct Corporation*,
 Case No. 2:16-cv-02685-PA-FFMx. I agree to comply with and to be bound by all the
 terms of this Stipulated Protective Order and I understand and acknowledge that failure
 to so comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is
 subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action. I
 hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with this
 action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____